



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2004

Ms. Maleshia B. Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2004-3646

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200895.

The City of Fort Worth (the "city") received a request for information pertaining to a specified sexual harassment investigation. You state that the city will release some of the requested information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.¹ Information is protected from disclosure by the common-law right to privacy if it (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. See *Ellen*, 840 S.W.2d at 525. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. See *id.* The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. See *id.* In concluding, however, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Thus, when there is an adequate summary of an investigation, the summary and any statements of the person under investigation must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements.

Based on your arguments and our review of the submitted information, we find that this information contains an adequate summary of the investigation at issue. Accordingly, we conclude that the city must withhold the identifying information of witnesses that we have marked within this summary pursuant to section 552.101 in conjunction with the common-law right to privacy. However, because the requestor in this instance was the victim of the alleged sexual harassment, we also find that she has a special right of access to information contained in the summary that would identify her. See Gov't Code § 552.023 (person has special right of access to information held by a governmental body that relates to person and that is protected from disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning herself). Thus, the city may not withhold such victim-identifying information from the requestor in this instance.² Further, pursuant to *Ellen*, the city must generally release to the requestor the remaining portions of this summary to the extent that it has not already done so. The department must withhold the remaining submitted information that is not part of this summary pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy on the basis of *Ellen*.

Finally, we note that a small portion of the summary of the investigation may be excepted from disclosure pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers,

² We note, however, that if the city receives another request for this particular information from a different requestor, the city should again seek a decision from us before releasing this information.

social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential pursuant to section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time that the request for it is received by a governmental body. See Open Records Decision No. 530 at 5 (1989). Thus, the city may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received by the city. The city may not withhold such information under section 552.117(a)(1) for an employee who did not make a timely election to keep the information confidential. Accordingly, we conclude that the city must withhold the information that we have marked under section 552.117(a)(1) of the Government Code in the summary provided that the current or former employee with whom the information is associated timely elected under section 552.024 to keep that information confidential. Otherwise, the city must release this particular marked information from the summary to the requestor.

In summary, the city must withhold the marked identifying information of witnesses contained within the summary pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The city must generally release to the requestor the remaining portions of this summary to the extent that it has not already done so. The city must withhold the remaining submitted information that is not part of this summary pursuant to section 552.101 in conjunction with the common-law right to privacy. The city must withhold the information that we have marked in the summary under section 552.117(a)(1) of the Government Code provided that the current or former employee with whom the information is associated timely elected under section 552.024 to keep that information confidential.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 200895

Enc. Marked documents

cc: Ms. Emily A. Turner
4803 Landrun Lane
Arlington, Texas 76017
(w/o enclosures)